

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREAS PEFANIS, on behalf of himself and
others similarly situated,

Case No. 08-cv-002 (DLC)

Plaintiff,

- v. -

RULE 56.1 STATEMENT

WESTWAY DINER, INC.,

Defendant.

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Defendant, WESTWAY DINER INC., ("Westway") pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, submits the following Statement of Material Facts as to which there is no genuine issue to be tried:

1. Plaintiff Andreas Pefanis commenced this action as a purported collective and class action against his former employer, Westway, under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 *et seq.* and the New York Labor Law. (Forman Affidavit, Exh. "A").

2. On August 7, 2009, the Court issued an Order granting certification of the case as a class action pursuant to Fed. R. Civ. Pro. Rule 23 permitting plaintiffs' counsel to mail notice of the action to all class members with an "opt-out" notice. (Forman Affidavit Exh. "C").

3. A total of 15 employees of Westway timely returned "opt-out" forms to Plaintiffs' counsel. (Forman Affidavit, Exh. "D").

Dated: April 30, 2009
Forest Hills, New York

MITCHELL & INCANTALUPO

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